

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's June 21, 2016 decision was December 18, 2016. Because using December 20, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 16, 2016, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an occupational disease causally related to factors of her federal employment.

FACTUAL HISTORY

On September 10, 2015 appellant, then a 52-year-old logistics management specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained respiratory tract congestion, headaches, sinusitis, asthma, itchy skin, facial rashes, cognitive deficits, and autoimmune response/distress due to exposure to harmful substances in her workplace. She indicated that she first became aware of her claimed condition on February 11, 2014 and first realized on March 18, 2014 that it was caused or aggravated by her employment. Appellant did not stop work.

In an accompanying undated statement, appellant indicated that in August 2013 she was diagnosed with black mold toxicity by Dr. Gregg S. Govett, an attending Board-certified otolaryngologist. She discussed the exposures at work which she believed caused this condition, indicating that spring 2013 had been very wet and that there were several roof leaks in Building 3001 at Tinker Air Force Base, her workplace at the time. Appellant noted that there also were leaks in the heating ventilation & air conditioning (HVAC) system, many of which were in the general area of her work desk. There was a strong musty smell in Building 3001 and there were black mold spores growing on the ceiling vents and some tiles. Appellant indicated that a conference room below her work area was condemned and had an open work order for white mold, and advised that her work area shared the same HVAC system as that conference room. Appellant's supervisor gave her permission to telework from home beginning September 3, 2013 and she began to recuperate and feel much better while she teleworked. Appellant indicated that, on October 30, 2013, her supervisor ordered her to report for an appointment with the base physician and noted that this physician wrote that she could return to duty because the vents in her work area had been cleaned and dehumidifiers had been installed. She noted that when she returned to work in Building 3001 in November 2013 she noticed that mold spores had already begun to resurface on the vents in her work area. Appellant advised that she became ill again within a couple of weeks after her return to Building 3001.

Appellant indicated that she took leave from December 9, 2013 to January 9, 2014 and noted that, on January 13, 2014, she began working in Building 9001 at Tinker Air Force Base. After a short time, she began to have symptoms again and, on February 11, 2014, she was moved to Building 3. Appellant indicated that she experienced symptoms within a matter of days and that she started taking leave on March 18, 2014. She noted that Dr. Timothy Moser, an attending Board-certified family practitioner and osteopath, diagnosed her with pulmonary disease in late March 2014 and that Dr. Govett agreed with the diagnosis. Appellant indicated

³ 5 U.S.C. § 8101 *et seq.*

that in April 2014 she started working in a different part of Building 3 than she had previously worked. Even though she believed that the air quality was better in this part of Building 3, she continued to have allergic symptoms and to experience difficulty working a full eight hours each day.⁴ Appellant discussed her medical treatment and the symptoms which she believed were related to exposure to harmful substances at work, including headaches, fever, fatigue, facial rashes, and breathing difficulties. She indicated that on March 3, 2015 she had an air quality evaluation at her home which showed normal results, thereby eliminating her home as the source of her illness. Appellant advised that she previously filed a claim (OWCP File No. xxxxxx628) regarding the same claimed occupational conditions which was denied in OWCP decisions dated October 9, 2013 and December 24, 2014.

In a March 2, 2015 report, an industrial hygiene associate for Marshall Environmental, Inc., indicated that a monitoring event was conducted at appellant's home. Appellant noted that airborne fungi samples were collected at various locations within the home, as well as along the back wall of the home in the backyard, and that measurements were taken for carbon dioxide, carbon monoxide, relative humidity, and temperature levels, both inside the home and in the ambient (*i.e.*, outdoor) environment for comparison purposes. The industrial hygiene associate indicated that the total indoor airborne fungi concentrations and indoor surface sample concentrations were not representative of a fungal amplification (*i.e.*, elevated concentrations of spores were not detected indoors). She noted that the indoor carbon dioxide, carbon monoxide, relative humidity, and temperature levels were in accordance with recommended levels, plus or minus several percent.

The record contains the results of an August 31, 2015 spore count examination conducted by the private firm EMLab P&K. The test sample consisted of a one-inch square ceiling tile from Building 3 at Tinker Air Force Base. The report listed spore counts for various types of fungi found on the tile, including 193 spores of *Cladosporium*.

The medical evidence submitted included a March 25, 2014 report from Dr. Moser who reported the findings of lung capacity testing and diagnosed appellant with fatigue, shortness of breath, and cough.

In a December 8, 2014 report, Dr. Govett noted that it had been brought to his attention that appellant's environmental symptoms of fatigue, malaise, skin rashes of undetermined origin, arthralgias, recurrent Candidiasis, and brain fog had returned. He indicated that appellant was still suffering from mycotoxicity (with a high tricothecenes level found through urinalysis) and advised that it would be beneficial for her workplace to be tested, as it apparently was full of mold.

In an August 17, 2015 report, Dr. Govett noted that appellant had been under his care since 2011 and had made 26 outpatient visits for fatigue and chemical sensitivities. He advised that urinalysis showed that she had tricothecenes mycotoxicity which contributed to her complaints. Dr. Govett asserted that appellant had documented the existence of mold in the buildings at Tinker Air Force Base, but that her home was found to be clean. He noted that she

⁴ Appellant indicated that her current supervisor allowed her to telework at home up to three days per week, but advised that, due to the demands of her work, she felt that it was unethical to remain in a routine teleworking status.

reported daily headaches, dyspnea, myalgias, arthralgias, dizziness, memory loss, brain fog, fatigue, cognitive dysfunction, and intermittent dysarthria after exposure to mold at work and that her symptoms were exacerbated when jet fuel seeped into her work building.

In a May 20, 2015 report, Dr. John W. Ellis, an attending Board-certified occupational medicine physician, noted that appellant reported that in 2013 she was exposed to high levels of mold in Building 3001 at Tinker Air Force Base. He indicated that her sensitization to environmental stimuli in her workspace at Tinker Air Force Base caused the diagnosed conditions of rhinitis and paranasitis of the upper respiratory tract and reactive airway disease (asthma) of the lower respiratory tract.

In a September 24, 2015 letter, OWCP requested that appellant submit additional evidence in support of her claim. It asked her to complete and return a factual development questionnaire which posed various questions regarding her possible exposure to harmful substances in the workplace and in her personal life. OWCP also requested that appellant submit a physician's opinion supported by a medical explanation as to how the reported work exposures caused or aggravated a diagnosed medical condition. On September 24, 2015 it also requested additional information from the employing establishment about appellant's possible exposure to harmful substances in the workplace.

Appellant submitted a September 29, 2015 response to the factual development questionnaire sent to her by the employing establishment. She provided additional details of her claimed exposure to harmful substances in the workplace and further described the treatment she received for her medical conditions. Appellant also submitted photographs of her face and of ceiling tiles/vents at her workplace. In an undated statement, a coworker indicated that she started working in Building 3 in February 2013 and noticed a musty smell from mold and the smell of jet fuel fumes. The coworker noted that she developed itching/burning of her eyes, itching of her skin, and headaches.

Appellant submitted numerous treatment notes from Dr. Govett, dated between February 24, 2014 and April 8, 2015. In an October 16, 2015 report, Dr. Govett indicated that she suffered from chronic fatigue syndrome secondary to mycotoxicity and chemical sensitivities acquired from mold in her worksites, including Building 3.

In a November 17, 2015 report, Dr. Ellis discussed appellant's reported work conditions and the symptoms of her various medical conditions. He detailed his findings upon physical examination and diagnosed sensitization to work environment, mold toxicity, and reactive airway disease (asthma). Dr. Ellis indicated that it was his medical opinion, based upon his examination and review of records, that it was more probable than not that appellant's diagnosed conditions arose from her employment. He found that her exposure to mold, volatile organic hydrocarbons, jet fuels, and other chemicals at Tinker Air Force Base caused her immune system to become hyperactive and to respond to these exposures.

In a December 15, 2015 decision, OWCP denied appellant's claim for an occupational disease. It found that she had not established fact of injury because the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted work factors.

On January 5, 2016 appellant requested a review of the written record with a representative of OWCP's Branch of Hearings and Review. She submitted a December 1, 2015 report in which Dr. Muhammad Amin, an attending Board-certified internist and pulmonologist, reviewed the findings of pulmonary function testing and diagnosed mild persistent asthma (uncomplicated). Dr. Amin noted that he suspected that appellant's asthma was triggered at her workplace, but he was not sure what the triggers were.

In a June 21, 2016 decision, OWCP's hearing representative affirmed the December 15, 2015 decision. The hearing representative advised that a review of appellant's prior occupational disease claim in OWCP File No. xxxxxx628 revealed that "no evidence was received to indicate any toxin in the environment" and noted that the prior claim was denied "on the basis of causal relationship."⁵ She asserted that cumulative medical evidence was received in connection with the present occupational disease claim and noted, without further explanation, that this evidence did not provide "adequate evidence to establish that the claimed illnesses would be due to the claimant's work environment." The hearing representative denied appellant's claim because she had not established the medical portion of fact of injury and noted that appellant "has a prior claim asserting the same conditions, but has not provided sufficient evidence to establish a change in any diagnosed condition due to her current claim." She indicated that OWCP might wish to combine the files for appellant's two occupational disease claims for future review purposes.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.⁷ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time and place, and in the manner alleged.⁸ An employee must submit medical evidence establishing that such event, incident, or exposure caused an injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

⁵ OWCP indicated that the Board affirmed this determination in a November 24, 2015 decision noting that no evidence had been provided to establish mold in the work environment as alleged by appellant and that a medical report of Dr. Ellis was not sufficiently well reasoned to establish causal relationship between a diagnosed condition and factors of appellant's federal employment.

⁶ *Supra* note 3.

⁷ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁹ *Id.*

¹⁰ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.¹¹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹²

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹³ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.¹⁴

ANALYSIS

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.¹⁵ Evidence may not be incorporated by reference, nor may evidence from another claimant’s case file be used.¹⁶ Evidence contained in another of the claimant’s case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.¹⁷ All evidence that forms the basis of a decision must be in that claimant’s case record.¹⁸

The June 21, 2016 decision, which is the subject of the current appeal, includes references to information associated with a prior claim of appellant, *i.e.*, a 2013 occupational disease claim in OWCP File No. xxxxxx628 in which she purportedly implicated many of the same employment factors identified in the present case. The hearing representative referenced evidence which is not part of the current file, and relied on this evidence in denying appellant’s

¹¹ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹² *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁴ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *Supra* note 11 Chapter 2.800.5a (June 2011).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

current claim for a work-related occupational injury. Appellant asserted that, beginning in spring 2013, the environmental conditions in Building 3001 contributed to her claimed medical condition.¹⁹ OWCP's hearing representative indicated that factual evidence contained in the file for appellant's previous occupational disease claim showed that she had not established exposure to toxins in the workplace. The hearing representative relied on this evidence to deny appellant's claim, yet this evidence is not contained in the present file. She also determined that the medical evidence appellant submitted in connection with her 2015 occupational disease claim was cumulative of medical evidence appellant submitted in connection with her 2013 occupational disease claim, but the hearing representative did not provide further explanation for this determination.

Although OWCP relied on the above-referenced information in denying appellant's claim for a work-related occupational injury, it neglected to include the referenced information from OWCP File No. xxxxxx628 in the current case record. Because of this oversight, the Board is not in a position to make an informed decision regarding her claim that she sustained a work-related occupational injury.²⁰

As the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. Upon remand OWCP shall combine the current case file with OWCP File No. xxxxxx628.²¹ After it has developed the record consistent with the above-noted directive, OWCP shall issue a *de novo* decision regarding appellant's claim for a work-related occupational condition.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁹ Appellant indicated that, beginning in 2014, her worksites in Building 9001 and Building 3 also contributed to her claimed work-related occupational injury.

²⁰ See *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

²¹ See *supra* notes 15 through 18.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: December 12, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board